48A C.J.S. Judges § 250

Corpus Juris Secundum | August 2023 Update

Judges
Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

1. In General

b. Bias or Prejudice

(2) Nature or Character

(a) In General

§ 250. Generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Judges 49(1)

Judicial prejudice is a mental attitude indicating a hostile feeling or spirit of ill will against one of the litigants.

Judicial prejudice is a mental attitude,[1] meaning a hostile feeling or spirit of ill will against one of the litigants.[2] Prejudice is prejudgment or the forming of an opinion without sufficient knowledge or examination; bias is a leaning of the mind or an inclination toward one person over another.[3] Bias requires antagonism or animosity toward the affiant or the affiant's counsel or favoritism towards the adverse party or his or her counsel.[4] No direct relationship between a judge and the party to the case is required in order to show bias on the part of the judge.[5]

Bias or prejudice of a judge must be based on more than mere conclusory allegations,[6] and a judge need not be recused based on the subjective view of a party.[7] The inquiry is an objective one;[8] the court asks not whether the judge is actually, subjectively biased but whether the average judge in such position is likely to be neutral or whether there is an unconstitutional potential for bias.[9] It is the actual existence of prejudice on the part of a judge, not the mere apprehension of it by a party, which disqualifies.[10] So, it has been held that actual bias or prejudice must be shown.[11] Nevertheless, it has also been stated that recusal may be

required whether or not actual bias exists or can be proved.[12] Indeed, the proper administration of law requires not only that judges refrain from actual bias but that they also avoid all appearances of unfairness.[13]

The disqualifying prejudice of a judge does not necessarily comprehend every bias, partiality, or prejudice which the judge may entertain with reference to the case.[14] "Partiality" does not refer to all favoritism but only to such as is wrongful or inappropriate,[15] and impartiality is not gullibility.[16] Bias or prejudice must be of a substantial nature[17] and of a character calculated to prevent or impede a judge's impartiality and sway the judge's judgment.[18] When prejudice of this character exists, the judge is disqualified.[19] However, where bias and prejudice are not of such character, the judge is not disqualified and may deny a recusal motion.[20]

Bias against state.

Bias or prejudice against the state in a civil or criminal case may be ground for the disqualification of a judge.[21]

CUMULATIVE SUPPLEMENT

Cases:

On a question of recusal, the court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias. Williams v. Pennsylvania, 136 S. Ct. 1899 (2016).

A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he or she is a part. Williams v. Pennsylvania, 136 S. Ct. 1899 (2016).

Great care must be taken by a judge to always be calmly judicial, dispassionate, and impartial, and not only an absence of actual bias is required, but also an absence of even the appearance of judicial bias. United States v. Mukes, 980 F.3d 526 (6th Cir. 2020).

Defendant's due process rights were violated by risk of bias by trial judge, in prosecution for felony-murder, burglary, attempted robbery, and conspiracy; FBI agent who was murder victim had been personally involved years earlier with the FBI's investigation of trial judge for perjury, corruption, and fraud, judge was well aware of FBI's efforts to ensure defendant's conviction, which included obtaining defendant's confession and gathering and analyzing fingerprint and ballistics evidence, and prosecution repeatedly emphasized that murder victim was FBI agent, so that average judge in his position would have understood risk entailed in making rulings favorable to defendant, but defendant was never informed of FBI's investigation of judge, so he never had opportunity to request judge's recusal. U.S. Const. Amend. 14. Echavarria v. Filson, 896 F.3d 1118 (9th Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 Mo.—In re C.D.G., 108 S.W.3d 669 (Mo. Ct. App. W.D. 2002).

2 Ariz.—Scheehle v. Justices of the Supreme Court of the State of Arizona, 211 Ariz. 282, 120 P.3d 1092 (2005).

A.L.R. Library
Gestures, facial expressions, or other nonverbal communication of trial judge in criminal case as ground for relief, 45 A.L.R.5th 531.

3 Wyo.—Steiger v. Happy Valley Homeowners Ass'n, 2010 WY 158, 245 P.3d 269 (Wyo. 2010).

4 U.S.—U.S. v. Nehas, 368 F. Supp. 435 (W.D. Pa. 1973).

Kan.—State v. Foy, 227 Kan. 405, 607 P.2d 481 (1980).

5 U.S.—Bell v. Chandler, 569 F.2d 556 (10th Cir. 1978).

6 La.—State v. Doleman, 835 So. 2d 850 (La. Ct. App. 4th Cir. 2002), writ denied, 853 So. 2d 633 (La. 2003).

7 Fla.—Ault v. State, 53 So. 3d 175 (Fla. 2010).

8 Conn.—State v. Ortiz, 83 Conn. App. 142, 848 A.2d 1246 (2004).

Del.—Jackson v. State, 21 A.3d 27 (Del. 2011), as corrected, (May 23, 2011).

Fla.—Barnhill v. State, 971 So. 2d 106 (Fla. 2007).

Iowa—State v. Millsap, 704 N.W.2d 426 (Iowa 2005).

9 U.S.—Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868, 129 S. Ct. 2252, 173 L. Ed. 2d 1208 (2009).

Ill.—In re Marriage of O'Brien, 2011 IL 109039, 354 Ill. Dec. 715, 958 N.E.2d 647 (Ill. 2011).

10 Ariz.—Stagecoach Trails MHC, L.L.C. v. City of Benson, 232 Ariz. 562, 307 P.3d 989 (Ct. App. Div. 2 2013).

11 Iowa—State v. Millsap, 704 N.W.2d 426 (Iowa 2005).

12 Mont.—Reichert v. State ex rel. McCulloch, 2012 MT 111, 365 Mont. 92, 278 P.3d 455 (2012).

Neb.—Huber v. Rohrig, 280 Neb. 868, 791 N.W.2d 590 (2010).

13 Ark.—Wakefield v. Wakefield, 64 Ark. App. 3, 64 Ark. App. 147, 984 S.W.2d 32 (1998).

14 U.S.—Duplan Corp. v. Deering Milliken, Inc., 400 F. Supp. 497 (D.S.C. 1975).

15 U.S.—Liteky v. U.S., 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

16 U.S.—Liteky v. U.S., 510 U.S. 540, 114 S. Ct. 1147, 127 L. Ed. 2d 474 (1994).

17 La.—State v. Doleman, 835 So. 2d 850 (La. Ct. App. 4th Cir. 2002), writ denied, 853 So. 2d 633 (La. 2003).

18 Ala.—Duncan v. Sherrill, 341 So. 2d 946 (Ala. 1977).

Wyo.—Cline v. Sawyer, 600 P.2d 725 (Wyo. 1979).

19 U.S.—Bell v. Chandler, 569 F.2d 556 (10th Cir. 1978).

Ga.—Savage v. Savage, 234 Ga. 853, 218 S.E.2d 568 (1975).

20 U.S.—U.S. v. Grinnell Corp., 384 U.S. 563, 86 S. Ct. 1698, 16 L. Ed. 2d 778 (1966).

Kan.—State v. Foy, 227 Kan. 405, 607 P.2d 481 (1980).

Authorization of electronic surveillance

The fact that the trial judge had authorized electronic surveillance on the telephone of one defendant did not demonstrate sufficient personal bias or prejudice on the part of the judge to require that he recuse himself.

U.S.—U.S. v. Garramone, 374 F. Supp. 256 (E.D. Pa. 1974).

21 Fla.—State ex rel. Brown v. Dewell, 131 Fla. 566, 179 So. 695, 115 A.L.R. 857 (1938).

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